

ILLINOIS POLLUTION CONTROL BOARD

August 7, 1975

PAIGE HALL, ET AL.,)
)
Complainants,)
)
v.) PCB 74-33
)
)
CITY OF DECATUR, ET AL.,)
)
Respondent.)

Mr. Robert W. Dodd appeared on behalf of Complainants,
Mr. Hilmer C. Larsholt appeared on behalf of Respondents.

OPINION AND ORDER OF THE BOARD (by Mr. Dumelle):

On January 22, 1974, Paige Hall, et al., filed a citizen complaint alleging that the City of Decatur, et al., had violated Rules 203(a), (b), (c), (d), (f), and (g) and 204(b) of Chapter 3, Water Pollution Regulations and Section 18 of the Environmental Protection Act (Act) by the use of Lake Decatur as a Public Water Supply. Hearings were held on September 25 and October 31, 1974 in Decatur. Complainants and Respondents filed briefs, and Complainants filed a Reply Brief.

Complainants base the allegation of the violations of Rule 203 and 204 upon the interpretation that a violation of Rule 204 can occur both by those who discharge contaminants and those who withdraw the degraded water resulting from the discharge of contaminants. Respondents respond that their operation of Lake Decatur as a Public Water Supply adds nothing to the water and therefore they cannot be found in violation of Rule 204. The question of the interpretation of Rule 204 is of first instance.

The Board had before it the question of the intent of Rule 204 when it adopted the Public Water Supply Regulations, R73-13. The opinion accompanying R73-13 states:

Clarification of the intent of the rule: The adopted change in the preamble language to Rule 204 makes it clear that it would be a violation to add anything to

water which would cause it to exceed the applicable standards. The previous language is not quite so clear, and would raise the question of whether it would also be a violation to use such water. The question of intent of an existing rule was not before us, and could be better answered in a separate proceeding - either a regulatory change or as a result of potential enforcement action. The intent of the existing rule was not a subject for consideration in these hearings. Our job was to promulgate regulations which will insure a safe and adequate supply of water for the general public.

(In the Matter of Public Water Supplies, R. 73-13, page 45 (January 3, 1975)).

It is helpful to review the statutory authority governing the adoption of Rule 204. Rule 101 Authority of the Water Pollution Regulations states in pertinent part:

Pursuant to the authority contained in Section 13 of the Environmental Protection Act which authorizes the Board to issue regulations... to assure that no contaminants are discharged into the waters without being given the degree of treatment or control necessary to prevent pollution...., the Board adopts the following rules and regulations.

Section B of the Act provides that the Board "may adopt regulations to promote the purposes and provision of this Title." Section 13 is within Title 3: Water Pollution of the Act. We read Title 3 to allow the Board to regulate water pollution.

Title 4: Public Water Supplies sets forth the legislation grant of authority to the Board to regulate Public Water Supplies (Section 17 of the Act). Subsequent to the filing of this complaint, the Board adopted Chapter 6, Public Water Supply Regulations on November 22, 1974.

Based upon the review of the statutory authority of Chapter Three, we find that Rule 204 applies only to those who discharge contaminants into the waters of the State. Consequently, the requirement that Rule 203 be met as imposed by Rule 204, only applies to those who discharge contaminants into the water of the State.

Remaining is an allegation that Respondents violate Section 18 of the Act which provides:

Owners and official custodians of public water supplies shall direct and maintain

the continuous operation and maintenance of water-supply facilities so that water shall be assuredly safe in quality, clean, adequate in quantity, and of satisfactory mineral character for ordinary domestic consumption.

Respondents do not deny that they are the owners and official custodians of the Public Water Supply for the City of Decatur.

Complainants presented much evidence concerning the marginal condition of Lake Decatur as a source of drinking water supply. Dr. Warren V. Brigham testified that his sampling for twelve water quality parameters of water taken from Lake Decatur had shown that the following parameters exceed the limits set forth in Rules 204 and 203 of the Water Pollution Regulations: total dissolved solids, total iron, nitrates, dissolved oxygen, and turbidity (R.11,15). He further testified that his analysis of Illinois Environmental Protection Agency (Agency) data confirmed his findings as to total iron, dissolved oxygen, and turbidity (R.16).

Dr. Fred Grosz, Professor at Millikin University, testified that he had investigated and found that nitrate levels in Lake Decatur and in tap water supplied from Lake Decatur were in the range of 40 parts per million (ppm) and that phosphate concentrations ranged from 0.2 to 1.0 ppm (R.58). Based upon his work as a Consultant to the Macon County Health Department, Dr. Grosz stated that phosphate levels were consistently high and nitrate levels were high twice per year when anhydrous ammonia is applied to farm land as fertilizer and in December when decomposition of organic matter occurs within the watershed of Lake Decatur (R.59 and 75).

Mr. Franklin Lewis, Regional Supervisor, Region III, Division of Public Water Supplies, Agency, testified that the Agency data only show one violation of nitrate concentrations since 1967 (R.238), and that the Decatur Water System is in general compliance (R.236).

A review of the Exhibits submitted by Complainant further supports the testimony of the above witnesses that Lake Decatur is of marginal quality. Naturally occurring events and conditions lead to excess total iron, turbidity, oxygen demanding organic wastes, phosphates, and nitrate levels. Septic tanks and agricultural activity upstream from Lake Decatur contribute to excessive nitrate levels

and elevated osphate and coliform levels. Fourteen known point sources are upstream from Lake Decatur (R.282 and 283).

Respondent produced evidence that its Water Supply System was approved by and had a permit for expansion from the Agency (Respondents Exhibit 2)(R.234,235). Respondents' Exhibits 7 and 8 indicate that the finished water quality complies with the finished water parameters set forth in Rule 304 B(4) of the Public Water Supply Regulations.

Upon consideration of the evidence produced we cannot reach a determination that Respondents violate Section 18 of the Act. The following definition of "safe" is found in Rule 104 of the Public Water Supply Regulations:

Safe means that the water contains no substances or organisms which are or may be injurious to a person in normal health who ingests the water.

The record clearly demonstrates that the finished water supplied by Respondents is safe.

While not presently before the Board, Rule 307 Raw Water Quality of the Public Water Supply Regulations requires that:

Each public water supply must take its raw water from the best available source which is economically reasonable and technically possible.

Much evidence was introduced regarding the relative benefits of continuing to utilize Lake Decatur as a surface supply or a conversion to the Mahomet Valley aquifer. The provisions of Rule 307 are the same as the requirements of Section 33(c)(4) to consider technical practicability and economic reasonableness. While it would be technically practicable to convert, we find that the cost of approximately \$57,500,000 (R.16) makes it economically unreasonable to require Respondent to convert to a ground-water public water supply from the Mahomet Aquifer at this time. However, we are concerned about the indication that nitrate levels are increasing in Lake Decatur (R.42). Lake Decatur is not now an ideal source of public water supply, and therefore Respondents should take all steps necessary to insure that they continue to supply water that meets the requirements of the Act and of Chapter 6.

This Opinion constitutes the Board's findings of fact and conclusions of law.

(5)

ORDER

The above captioned complaint is dismissed with prejudice.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 5th day of August, 1975 by a vote of 5 to 0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board